

House Engrossed

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 27

# **HOUSE BILL 2045**

AN ACT

AMENDING TITLE 33, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 22; AMENDING SECTIONS 37-1131, 41-192, 41-1001.01, 41-1304 AND 41-3010.15, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3020.15; RELATING TO THE LEGISLATIVE COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 33, Arizona Revised Statutes, is amended by adding  
3 chapter 22, to read:

4 CHAPTER 22

5 ACCESS TO PRIVATE PROPERTY

6 ARTICLE 1. GENERAL PROVISIONS

7 33-2401. Access to private property

8 NOTWITHSTANDING ANY OTHER LAW, REASONABLE ACCESS TO PRIVATE PROPERTY  
9 SHALL NOT BE DENIED BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.

10 Sec. 2. Section 37-1131, Arizona Revised Statutes, is amended to read:

11 37-1131. Notice to landowners; quiet title action

12 A. If the commission determines a watercourse to be navigable as  
13 provided in section 37-1128, the state land department shall do the following  
14 before it files any quiet title action regarding public trust property  
15 beneath or adjacent to the watercourse:

16 1. Collect information and perform land surveys that are necessary to  
17 determine the boundaries of the bed of the watercourse. The bed of the  
18 watercourse to which the state claim applies is the bed of the watercourse  
19 existing on the date of the commission's determination, unless the  
20 preponderance of the evidence establishes a different location. Before  
21 making this determination, the department shall provide public notice and any  
22 opportunity for comment by the ~~advocate for private property rights~~  
23 ~~established pursuant to title 41, chapter 8, article 1.1 and any other person~~  
24 PUBLIC.

25 2. Compile a complete description of each parcel of land lying wholly  
26 or partially in the bed of the watercourse, including record title ownership  
27 by any person, and a complete title search of each parcel to show how and  
28 when the lands were first conveyed in apparent violation of the public trust.

29 3. If the land was conveyed in apparent violation of the public trust  
30 by an agency of the United States, bring an action against the United States  
31 for damages and prosecute the action to final judgment. Any damages  
32 collected shall be placed in the riparian trust fund established by section  
33 37-1156.

34 B. At least thirty days before entering onto any lands in or adjacent  
35 to the bed of a watercourse as required for purposes of this section, the  
36 department shall notify any record title owner of the property by certified  
37 mail of the intention to inspect the property. The notice shall:

38 1. State the period during which the department or the department's  
39 consultant intends to inspect the property and that the inspection is  
40 required under subsection A of this section.

41 2. Describe the activities that the department or the department's  
42 consultant intends to perform on the property.

43 C. Within thirty days after compiling the parcel information pursuant  
44 to subsection A, paragraph 2 of this section the department shall notify each  
45 record owner or lessee of property that is located in the bed of the

1 navigable watercourse and each person and entity that have an interest of  
2 record in the property of the commission's determination and that, by virtue  
3 of the determination, all or a portion of the property will be claimed as  
4 public trust land of this state in a quiet title action. ~~The notice shall~~  
5 ~~also provide information prepared by the advocate for private property rights~~  
6 ~~explaining the person's rights and any services available from the advocate.~~  
7 The notice shall include:

8 1. The name of the watercourse and the date of the determination of  
9 navigability pursuant to section 37-1128.

10 2. The legal description and acreage of the parcels that the  
11 department has determined to be in the bed of the watercourse.

12 3. A statement that record title owners, lessees and parties having an  
13 interest of record in the parcels have a right to appeal the department's  
14 determination of the parcel boundaries within thirty days after receiving the  
15 notice as provided by title 41, chapter 6, article 10.

16 D. The department shall not commence an action to quiet title to land  
17 under this article until the commission has issued a final determination  
18 regarding the navigability of the watercourse pursuant to section 37-1128 and  
19 that determination is subject to no further judicial review pursuant to  
20 section 37-1129.

21 E. Venue for any action to quiet title under this section is proper  
22 only in the superior court in the county in which the affected lands are  
23 located, but the court may grant or deny requests for change of venue  
24 pursuant to title 12, chapter 4, article 1.

25 F. The department shall join as parties to any action to quiet title  
26 under this section each record owner of, and each person or entity that has  
27 an interest of record in, any property in the county that may be affected by  
28 this state's claim to ownership of the bed of the affected watercourse, but  
29 this requirement does not constitute grounds for dismissing the action if the  
30 persons or entities not joined are not subject to the jurisdiction of the  
31 courts of this state.

32 Sec. 3. Section 41-192, Arizona Revised Statutes, is amended to read:  
33 41-192. Powers and duties of attorney general; restrictions on  
34 state agencies as to legal counsel; exceptions

35 A. The attorney general shall have charge of and direct the department  
36 of law and shall serve as chief legal officer of the state. The attorney  
37 general shall:

38 1. Be the legal advisor of the departments of this state and render  
39 such legal services as the departments require.

40 2. Establish administrative and operational policies and procedures  
41 within his department.

42 3. Approve long-range plans for developing departmental programs  
43 therein, and coordinate the legal services required by other departments of  
44 this state or other state agencies.

1           4. Represent school districts and governing boards of school districts  
2 in any lawsuit involving a conflict of interest with other county offices.

3           5. Represent political subdivisions, school districts and  
4 municipalities in suits to enforce state or federal statutes pertaining to  
5 antitrust, restraint of trade or price-fixing activities or conspiracies, if  
6 the attorney general notifies in writing the political subdivisions, school  
7 districts and municipalities of the attorney general's intention to bring any  
8 such action on its behalf. At any time within thirty days after the  
9 notification, the political subdivisions, school districts and  
10 municipalities, by formal resolution of its governing body, may withdraw the  
11 authority of the attorney general to bring the intended action on its behalf.

12           6. In any action brought by the attorney general pursuant to state or  
13 federal statutes pertaining to antitrust, restraint of trade, or price-fixing  
14 activities or conspiracies for the recovery of damages by this state or any  
15 of its political subdivisions, school districts or municipalities, in  
16 addition to the attorney general's other powers and authority, the attorney  
17 general on behalf of this state may enter into contracts relating to the  
18 investigation and prosecution of such action with any other party plaintiff  
19 who has brought a similar action for the recovery of damages and with whom  
20 the attorney general finds it advantageous to act jointly or to share common  
21 expenses or to cooperate in any manner relative to such action. In any such  
22 action, notwithstanding any other laws to the contrary, the attorney general  
23 may undertake, among other things, to render legal services as special  
24 counsel or to obtain the legal services of special counsel from any  
25 department or agency of the United States, of this state or any other state  
26 or any department or agency thereof or any county, city, public corporation  
27 or public district in this state or in any other state that has brought or  
28 intends to bring a similar action for the recovery of damages or their duly  
29 authorized legal representatives in such action.

30           7. Organize the civil rights division within the department of law and  
31 administer such division pursuant to the powers and duties provided in  
32 chapter 9 of this title.

33           8. Compile, publish and distribute to all state agencies, departments,  
34 boards, commissions and councils, and to other persons and government  
35 entities on request, at least every ten years, the Arizona agency handbook  
36 that sets forth and explains the major state laws that govern state agencies,  
37 including information on the laws relating to bribery, conflicts of interest,  
38 contracting with the government, disclosure of public information,  
39 discrimination, nepotism, financial disclosure, gifts and extra compensation,  
40 incompatible employment, political activity by employees, public access and  
41 misuse of public resources for personal gain. A supplement to the handbook  
42 reflecting revisions to the information contained in the handbook shall be  
43 compiled and distributed by the attorney general as deemed necessary.

1 B. Except as otherwise provided by law, the attorney general may:

2 1. Organize the department into such bureaus, subdivisions or units as  
3 he deems most efficient and economical, and consolidate or abolish them.

4 2. Adopt rules for the orderly conduct of the business of the  
5 department.

6 3. Employ and assign assistant attorneys general and other employees  
7 necessary to perform the functions of the department.

8 4. Compromise or settle any action or claim by or against this state  
9 or any department, board or agency of this state. If the compromise or  
10 settlement involves a particular department, board or agency of this state,  
11 the compromise or settlement shall be first approved by the department, board  
12 or agency. If no department or agency is named or otherwise materially  
13 involved, the approval of the governor shall be first obtained.

14 5. Charge reasonable fees for distributing official publications,  
15 including attorney general legal opinions and the Arizona agency handbook.  
16 The fees received shall be transmitted to the state treasurer for deposit in  
17 the state general fund.

18 C. Assistants and employees in any legal division subject to a merit  
19 system prior to March 6, 1953 shall remain subject thereto.

20 D. The powers and duties of a bureau, subdivision or unit shall be  
21 limited to those assigned by law to the department.

22 E. Notwithstanding any law to the contrary, except as provided in  
23 subsections F and G of this section, no state agency other than the attorney  
24 general shall employ legal counsel or make an expenditure or incur an  
25 indebtedness for legal services, but the following are exempt from this  
26 section:

27 1. The director of water resources.

28 2. The residential utility consumer office.

29 3. The industrial commission.

30 4. The Arizona board of regents.

31 5. The auditor general.

32 6. The corporation commissioners and the corporation commission other  
33 than the securities division.

34 ~~7. The advocate for private property rights.~~

35 ~~8.~~ 7. The office of the governor.

36 ~~9.~~ 8. The constitutional defense council.

37 ~~10.~~ 9. The office of the state treasurer.

38 F. If the attorney general determines that he is disqualified from  
39 providing judicial or quasi-judicial legal representation or legal services  
40 on behalf of any state agency in relation to any matter, the attorney general  
41 shall give written notification to the state agency affected. If the agency  
42 has received written notification from the attorney general that the attorney  
43 general is disqualified from providing judicial or quasi-judicial legal  
44 representation or legal services in relation to any particular matter, the

1 state agency is authorized to make expenditures and incur indebtedness to  
2 employ attorneys to provide the representation or services.

3 G. If the attorney general and the director of the department of  
4 agriculture cannot agree on the final disposition of a pesticide complaint  
5 under section 3-368, if the attorney general and the director determine that  
6 a conflict of interest exists as to any matter or if the attorney general and  
7 the director determine that the attorney general does not have the expertise  
8 or attorneys available to handle a matter, the director is authorized to make  
9 expenditures and incur indebtedness to employ attorneys to provide  
10 representation or services to the department with regard to that matter.

11 H. Any department or agency of this state authorized by law to  
12 maintain a legal division or incur expenses for legal services from funds  
13 derived from sources other than the general revenue of the state, or from any  
14 special or trust fund, shall pay from such source of revenue or special or  
15 trust fund into the general fund of the state, to the extent such funds are  
16 available and upon a reimbursable basis for warrants drawn, the amount  
17 actually expended by the department of law within legislative appropriations  
18 for such legal division or legal services.

19 I. Appropriations made pursuant to subsection H of this section shall  
20 not be subject to lapsing provisions otherwise provided by law. Services for  
21 departments or agencies to which this subsection and subsection G of this  
22 section are applicable shall be performed by special or regular assistants to  
23 the attorney general.

24 J. Notwithstanding section 35-148, monies received by the attorney  
25 general from charges to state agencies and political subdivisions for legal  
26 services relating to interagency service agreements shall be deposited,  
27 pursuant to sections 35-146 and 35-147, in an attorney general agency  
28 services fund. Monies in the fund are subject to legislative appropriation  
29 and are exempt from the provisions of section 35-190 relating to lapsing of  
30 appropriations.

31 Sec. 4. Section 41-1001.01, Arizona Revised Statutes, is amended to  
32 read:

33 41-1001.01. Regulatory bill of rights

34 A. To ensure fair and open regulation by state agencies, a person:

35 1. Is eligible for reimbursement of fees and other expenses if the  
36 person prevails by adjudication on the merits against an agency in a court  
37 proceeding regarding an agency decision as provided in section 12-348.

38 2. Is eligible for reimbursement of the person's costs and fees if the  
39 person prevails against any agency in an administrative hearing as provided  
40 in section 41-1007.

41 3. Is entitled to have an agency not charge the person a fee unless  
42 the fee for the specific activity is expressly authorized as provided in  
43 section 41-1008.

44 4. Is entitled to receive the information and notice regarding  
45 inspections prescribed in section 41-1009.

- 1       5. May review the full text or summary of all rule making activity,  
2 the summary of substantive policy statements and the full text of executive  
3 orders in the register as provided in article 2 of this chapter.
- 4       6. May participate in the rule making process as provided in articles  
5 3, 4, 4.1 and 5 of this chapter, including:
  - 6       (a) Providing written or oral comments on proposed rules to an agency  
7 as provided in section 41-1023 and having the agency adequately address those  
8 comments as provided in section 41-1052, subsection C.
  - 9       (b) Providing written or oral comments on rules to the governor's  
10 regulatory review council as provided in article 5 of this chapter.
- 11       7. Is entitled to have an agency not base a licensing decision in  
12 whole or in part on licensing conditions or requirements that are not  
13 specifically authorized by statute, rule or state tribal gaming compact as  
14 provided in section 41-1030, subsection B.
- 15       8. Is entitled to have an agency not make a rule under a specific  
16 grant of rule making authority that exceeds the subject matter areas listed  
17 in the specific statute or not make a rule under a general grant of rule  
18 making authority to supplement a more specific grant of rule making authority  
19 as provided in section 41-1030, subsection C.
- 20       9. May allege that an existing agency practice or substantive policy  
21 statement constitutes a rule and have that agency practice or substantive  
22 policy statement declared void because the practice or substantive policy  
23 statement constitutes a rule as provided in section 41-1033.
- 24       10. May file a complaint with the administrative rules oversight  
25 committee concerning:
  - 26       (a) A rule's, practice's or substantive policy statement's lack of  
27 conformity with statute or legislative intent as provided in section 41-1047.
  - 28       (b) An existing statute, rule, practice alleged to constitute a  
29 rule or substantive policy statement that is alleged to be duplicative or  
30 onerous as provided in section 41-1048.
- 31       11. May have the person's administrative hearing on contested cases and  
32 appealable agency actions heard by an independent administrative law judge as  
33 provided in articles 6 and 10 of this chapter.
- 34       12. May have administrative hearings governed by uniform administrative  
35 appeal procedures as provided in articles 6 and 10 of this chapter.
- 36       13. May have an agency approve or deny the person's license application  
37 within a predetermined period of time as provided in article 7.1 of this  
38 chapter.
- 39       14. Is entitled to receive written notice from an agency on denial of a  
40 license application:
  - 41       (a) That justifies the denial with references to the statutes or rules  
42 on which the denial is based as provided in section 41-1076.
  - 43       (b) That explains the applicant's right to appeal the denial as  
44 provided in section 41-1076.

1        15. Is entitled to receive information regarding the license  
2 application process at the time the person obtains an application for a  
3 license as provided in section 41-1079.

4        16. May receive public notice and participate in the adoption or  
5 amendment of agreements to delegate agency functions, powers or duties to  
6 political subdivisions as provided in section 41-1026.01 and article 8 of  
7 this chapter.

8        17. May inspect all rules and substantive policy statements of an  
9 agency, including a directory of documents, in the office of the agency  
10 director as provided in section 41-1091.

11        ~~18. May file a complaint or inquiry with the advocate for private~~  
12 ~~property rights regarding constitutional taking as provided in chapter 8,~~  
13 ~~article 1.1 of this title.~~

14        ~~19.~~ 18. May file a complaint with the office of the ombudsman-citizens  
15 aide to investigate administrative acts of agencies as provided in chapter 8,  
16 article 5 of this title.

17        B. The enumeration of the rights listed in subsection A of this  
18 section does not grant any additional rights that are not prescribed in the  
19 sections referenced in subsection A of this section.

20        Sec. 5. Section 41-1304, Arizona Revised Statutes, is amended to read:  
21 41-1304. Powers and duties

22        A. The legislative council shall:

23        1. Provide bill drafting, research and other services to the  
24 legislature deemed necessary or advisable by the council to improve the  
25 quality of legislation and to ~~insure~~ ENSURE full participation by the  
26 legislative branch in determining and reviewing policy and the administration  
27 of state affairs.

28        2. Adopt rules and formulate policies for the administration of this  
29 article and for the conduct of the affairs of the council.

30        3. Appoint such clerical, stenographic, technical and professional  
31 assistants deemed necessary or advisable to carry out the provisions of this  
32 article, and fix their compensation and prescribe their powers and duties.

33        4. Consult with state departments or officers engaged in carrying out  
34 construction programs authorized by law, and investigate the conduct of the  
35 programs, with particular reference to the plans for and type of  
36 construction.

37        5. Maintain a legislative reference library, containing legal,  
38 statistical and descriptive data and authoritative philosophical and  
39 scientific treatises on current and potential legislative subjects.

40        6. Procure information at the request of members of the legislature or  
41 state officers on any legislative subject.

42        7. Prepare or revise bills and other legislative measures for members  
43 or committees of the legislature and, on request of a member of the  
44 legislature, for state officers and agencies.



1       8. Prepare and issue styles and forms for drafting bills, amendments  
2 and other legislative measures for the use of the legislature, state officers  
3 and persons interested in drafting amendments and bills or measures for  
4 introduction in the legislature. The styles and forms for drafting  
5 amendments shall be developed and adopted in consultation and cooperation  
6 with the senate and the house of representatives.

7       9. Prepare and file with the secretary of state, not later than sixty  
8 days preceding the regular primary election, an analysis of the provisions of  
9 each ballot proposal of a measure or proposed amendment.

10      ~~10. Provide and maintain an office for the advocate for private~~  
11 ~~property rights pursuant to article 1.1 of this chapter.~~

12       B. The legislative council may purchase, lease and otherwise acquire  
13 land and buildings and make improvements to land and buildings it acquires or  
14 uses for the purpose of providing suitable facilities for the use of the  
15 legislative department. The council may obtain operational, maintenance and  
16 security assistance for any legislative facilities without charge from the  
17 department of administration, may employ personnel to discharge such  
18 functions or may contract for outside services payable from council  
19 appropriations.

20       Sec. 6. Section 41-3010.15, Arizona Revised Statutes, is amended to  
21 read:

22       41-3010.15. Advocate for private property rights; termination  
23                   July 1, 2010

24       A. ~~The legislative council and The ombudsman~~ ADVOCATE for private  
25 property rights ~~terminate~~ TERMINATES on July 1, 2010.

26       B. Title 41, chapter 8, ~~articles 1 and~~ ARTICLE 1.1 are IS repealed on  
27 January 1, 2011.

28       Sec. 7. Title 41, chapter 27, article 2, Arizona Revised Statutes, is  
29 amended by adding section 41-3020.15, to read:

30       41-3020.15. Legislative council; termination July 1, 2020

31       A. THE LEGISLATIVE COUNCIL TERMINATES ON JULY 1, 2020.

32       B. TITLE 41, CHAPTER 8, ARTICLE 1 IS REPEALED ON JANUARY 1, 2021.

33       Sec. 8. Purpose

34       Pursuant to section 41-2955, subsection B, Arizona Revised Statutes,  
35 the legislature continues the legislative council to improve the quality of  
36 legislation and to ensure full participation by the legislative branch in  
37 determining and reviewing policy and the administration of state affairs.

38       Sec. 9. Retroactivity

39       Sections 6 and 7 of this act are effective retroactively to July 1,  
40 2010.

APPROVED BY THE GOVERNOR APRIL 9, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2010.